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8 CITY OF CALIMESA

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION**
11

12 CITY OF CALIMESA,

13 Plaintiff,

14 v.

15 EVEREST REINSURANCE COMPANY, a
Delaware Corporation; and DOES 1 through
16 10, inclusive,

17 Defendants.

Case No.

**COMPLAINT FOR ENFORCEMENT
OF OBLIGATIONS UNDER
PERFORMANCE BONDS**

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COMPLAINT FOR ENFORCEMENT OF OBLIGATIONS UNDER PERFORMANCE BONDS

1 The City of Calimesa alleges:

2 1. Plaintiff City of Calimesa ("City") is and was at all relevant times a general
3 law city organized and existing under the laws of the State of California.

4 2. Defendant Everest Reinsurance Company ("Everest") is a corporation formed
5 under the laws of the State of Delaware. The City is informed and believes and thereon
6 alleges that Everest is domiciled in the State of Delaware, and is authorized to conduct
7 business in the State of California.

8 3. The City does not know the true names and capacities of defendants sued
9 herein as Does 1 through 10, inclusive, and therefore sues these defendants by such
10 fictitious names. The City is informed and believes, and thereon alleges, that each of the
11 defendants designated herein as Does 1 through 10, inclusive, is in some manner legally
12 responsible for the events and occurrences herein alleged, or conspired in some manner
13 with the named defendant and/or each other, and that the City's damages herein alleged
14 were proximately caused by their conduct. The City will amend this complaint to allege
15 their true names and capacities when ascertained.

16 4. The City is informed and believes, and thereon alleges, that at all relevant
17 times, each of the defendants was the agent of each of the other defendants and, in doing
18 the things herein alleged, each defendant was acting within the course and scope of such
19 agency, with the consent, ratification and permission of each of the defendants. The City is
20 informed and believes, and thereon alleges, that at all relevant times, each of the defendants
21 participated, agreed and conspired to commit the wrongful acts described herein and aided
22 and abetted the other defendants in the commission of these wrongful acts.

23 **Jurisdiction and Venue**

24 5. This proceeding is instituted pursuant to 28 U.S.C. § 1332, in that the amount
25 in controversy exceeds the minimal jurisdictional amount of controversy, exclusive of
26 interest and costs, and there exists complete diversity of citizenship between Plaintiff and
27 Defendants.

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6. Venue is proper in this judicial district as the subject Subdivision Improvement Agreement (defined herein) and performance bonds referenced herein were entered into in this judicial district and all obligations thereunder were to be performed in this judicial district.

Development Agreement and Subdivision Improvement Agreement

7. On or about January 26, 2021, the City and Oak Valley Development Company (“OVCD”) entered into a Development Agreement memorializing, *inter alia*, the terms, conditions, rights and obligations of the parties referenced therein for the development of a project commonly known as “Oak Valley Town Center At Summerwind Ranch” (the “Development”). In the Development Agreement, OVDC agreed to the following pertinent provision in Section 7 thereof: “Developer shall, at its sole cost and expense, design, construct, install and finally complete Public Improvements Developer shall provide City with all insurance and performance bonds, labor and material bonds and other security in types, forms and amounts as required in accordance with City standards at the time of plan approval, and in accordance with the requirements of the City Attorney. . . . City and Developer shall enter into City’s standard subdivision improvement agreement, or an applicable modification thereof, for the completion of the Public Improvements.”

“Public Improvements” is defined under the Development Agreement as “the streets, trails, paseos, parks, infrastructure and other public facilities that are to be constructed and dedicated to the City or other public entities and which are part of the proposed Development. Public Improvements collectively include (i) Off-Site Improvements (those public improvements outside the boundaries of the Property, and listed on Exhibit ‘E’), and (ii) On-Site Improvements (those public improvements within the boundaries of the Property and listed on Exhibit ‘F’).”

8. On or about November 4, 2022 (with subsequent dates for fully completed signatures), the City and OVDC entered into a Subdivision Improvement Agreement (“SIA”) as provided for in the Development Agreement. In the SIA, Improvements were

1 listed in Schedule A. A true and correct copy of the SIA and Schedule A are attached hereto
2 as Exhibit "A."

3 9. In the SIA, OVDC agreed to complete the Improvements within two years of
4 the Effective Date of the SIA. The Effective Date of the SIA was February 6, 2023.

5 10. To secure completion of the Improvements in the event of default by OVDC,
6 Everest issued performance bonds, identified by numbers ES00012793; ES00012794;
7 ES00012786; ES00012795; ES00012796; and ES00012797 (collectively the "Bonds"). In
8 each of the Bonds, Everest promised to "guarantee the faithful performance of said [SIA] . .
9 .," and Everest promised to be "held and firmly bound onto the City in the penal sum"
10 specified in each of the Bonds. Further, each of the Bonds stated in relevant part: "As part
11 of the obligation secured hereby, and in addition to the face amount specified, costs and
12 reasonable expenses and fees shall be included, including reasonable attorneys' fees,
13 incurred by the City in successfully enforcing the obligation, all to be taxed as costs and
14 included in any judgment rendered."

15 11. In a letter dated October 6, 2023, the City sent a letter to OVDC and Everest
16 entitled "Notice of Breach & Demand on Performance Bond Surety To Take Over
17 Improvements Upon Default." Upon request by OVDC, the City provided a 4-month
18 extension of time to cure the alleged Default in that letter. As of the date of the filing of
19 this complaint, the 4-month extension period has expired and with no further extensions of
20 time. On April 9, 2024, and pursuant to Section 11, subsection C of the SIA, the City
21 served written notice of default on OVDC, and demanded Everest take over and complete
22 the Improvements. Everest has failed to provide written notice of its intention to perform
23 its obligations under the Agreement and the Bonds within ten (10) days, as required under
24 Section 11, subsection C. of the SIA. OVDC and Everest at all relevant times and up to the
25 filing of this complaint, Everest has not performed any obligations required under the
26 Bonds, including but not limited to a takeover of the completion of the Improvements or
27 surrender of the penal amounts set forth in the Bonds.

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FIRST CLAIM FOR RELIEF -- BREACH OF WRITTEN CONTRACT
(PERFORMANCE BOND ES00012793)
(Against EVEREST and DOES 1 through 10)

12. The City hereby incorporates paragraphs 1 through 11, inclusive, as though set forth in full.

13. On or about November 4, 2022, Everest issued faithful performance bond number ES00012793, the obligations under which are enforceable by contractual duties under California law. A true and correct copy of this bond is attached within Exhibit "A" and is incorporated herein.

14. Everest Bond number ES00012793 is a bond securing performance of "Oak Valley Town Center, PM 37862, Street Improvements," with a penal sum of \$6,845,000.00.

15. Everest has breached its obligations under bond number ES00012793 by (a) failing to render faithful performance to complete the subject improvements, and/or (b) failing to surrender the penal sum of the subject bond.

16. At all times relevant hereto, the City has fully performed its obligations under Bond number ES00012793, and has otherwise been ready, willing and able to perform its remaining obligations, if any, under that surety bonds. Any further performance by the City has been excused by Everest's failure to perform.

17. As a direct and proximate result of Everest's breach of its obligations under the subject bond, the Improvements remain uncompleted.

18. The City has been damaged in an amount according to proof at the time of trial, including recovery of reasonably incurred attorney's fees and costs as provided for under Performance Bond ES0012793.

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SECOND CLAIM FOR RELIEF -- BREACH OF WRITTEN CONTRACT
(PERFORMANCE BOND ES00012794)
(Against EVEREST and DOES 1 through 10)

19. The City hereby incorporates paragraphs 1 through 11, inclusive, as though set forth in full.

20. On or about November 4, 2022, Everest issued faithful performance bond number ES00012794, the obligations under which are enforceable by contractual duties under California law. A true and correct copy of this bond is attached within Exhibit "A" and is incorporated herein.

21. Everest Bond number ES00012794 is a bond securing performance of "Oak Valley Town Center, PM 37862, Storm Drain Improvements," with a penal sum of \$779,500.00.

22. Everest has breached its obligations under bond number ES00012794 by (a) failing to render faithful performance to complete the subject improvements, and/or (b) failing to surrender the penal sum of the subject bond.

23. At all times relevant hereto, the City has fully performed its obligations under Bond number ES00012794, and has otherwise been ready, willing and able to perform its remaining obligations, if any, under that surety bonds. Any further performance by the City has been excused by Everest's failure to perform.

24. As a direct and proximate result of Everest's breach of its obligations under the subject bond, the Improvements remain uncompleted.

25. The City has been damaged in an amount according to proof at the time of trial, including recovery of reasonably incurred attorney's fees and costs as provided for under Performance Bond ES0012794.

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THIRD CLAIM FOR RELIEF -- BREACH OF WRITTEN CONTRACT
(PERFORMANCE BOND ES00012786)
(Against EVEREST and DOES 1 through 10)

26. The City hereby incorporates paragraphs 1 through 11, inclusive, as though set forth in full.

27. On or about November 4, 2022, Everest issued faithful performance bond number ES00012786, the obligations under which are enforceable by contractual duties under California law. A true and correct copy of this bond is attached within Exhibit "A" and is incorporated herein.

28. Everest Bond number ES00012786 is a bond securing performance of "Oak Valley Town Center, PM 37862, Drainage Facilities, #137-0-3-90296," with a penal sum of \$8,296,367.00.

29. Everest has breached its obligations under bond number ES00012786 by (a) failing to render faithful performance to complete the subject improvements, and/or (b) failing to surrender the penal sum of the subject bond.

30. At all times relevant hereto, the City has fully performed its obligations under Bond number ES00012786, and has otherwise been ready, willing and able to perform its remaining obligations, if any, under that surety bonds. Any further performance by the City has been excused by Everest's failure to perform.

31. As a direct and proximate result of Everest's breach of its obligations under the subject bond, the Improvements remain uncompleted.

32. The City has been damaged in an amount according to proof at the time of trial, including recovery of reasonably incurred attorney's fees and costs as provided for under Performance Bond ES0012786.

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FOURTH CLAIM FOR RELIEF -- BREACH OF WRITTEN CONTRACT
(PERFORMANCE BOND ES00012795)
(Against EVEREST and DOES 1 through 10)

33. The City hereby incorporates paragraphs 1 through 11, inclusive, as though set forth in full.

34. On or about November 4, 2022, Everest issued faithful performance bond number ES00012795, the obligations under which are enforceable by contractual duties under California law. A true and correct copy of this bond is attached within Exhibit "A" and is incorporated herein.

35. Everest Bond number ES00012795 is a bond securing performance of "Oak Valley Town Center, PM 37862, Onsite Traffic Signals," with a penal sum of \$1,375,000.00.

36. Everest has breached its obligations under bond number ES00012795 by (a) failing to render faithful performance to complete the subject improvements, and/or (b) failing to surrender the penal sum of the subject bond.

37. At all times relevant hereto, the City has fully performed its obligations under Bond number ES00012795, and has otherwise been ready, willing and able to perform its remaining obligations, if any, under that surety bonds. Any further performance by the City has been excused by Everest's failure to perform.

38. As a direct and proximate result of Everest's breach of its obligations under the subject bond, the Improvements remain uncompleted.

39. The City has been damaged in an amount according to proof at the time of trial, including recovery of reasonably incurred attorney's fees and costs as provided for under Performance Bond ES0012795.

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FIFTH CLAIM FOR RELIEF -- BREACH OF WRITTEN CONTRACT
(PERFORMANCE BOND ES00012796)
(Against EVEREST and DOES 1 through 10)

40. The City hereby incorporates paragraphs 1 through 11, inclusive, as though set forth in full.

41. On or about November 4, 2022, Everest issued faithful performance bond number ES00012796, the obligations under which are enforceable by contractual duties under California law. A true and correct copy of this bond is attached within Exhibit "A" and is incorporated herein.

42. Everest Bond number ES00012796 is a bond securing performance of "Oak Valley Town Center, PM 37862, Roberts Road Culvert Improvements," with a penal sum of \$1,228,500.00.

43. Everest has breached its obligations under bond number ES00012796 by (a) failing to render faithful performance to complete the subject improvements, and/or (b) failing to surrender the penal sum of the subject bond.

44. At all times relevant hereto, the City has fully performed its obligations under Bond number ES00012796, and has otherwise been ready, willing and able to perform its remaining obligations, if any, under that surety bonds. Any further performance by the City has been excused by Everest's failure to perform.

45. As a direct and proximate result of Everest's breach of its obligations under the subject bond, the Improvements remain uncompleted.

46. The City has been damaged in an amount according to proof at the time of trial, including recovery of reasonably incurred attorney's fees and costs as provided for under Performance Bond ES0012796.

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SIXTH CLAIM FOR RELIEF -- BREACH OF WRITTEN CONTRACT
(PERFORMANCE BOND ES00012797)
(Against EVEREST and DOES 1 through 10)

47. The City hereby incorporates paragraphs 1 through 11, inclusive, as though set forth in full.

48. On or about November 4, 2022, Everest issued faithful performance bond number ES00012797, the obligations under which are enforceable by contractual duties under California law. A true and correct copy of this bond is attached within Exhibit "A" and is incorporated herein.

49. Everest Bond number ES00012797 is a bond securing performance of "Oak Valley Town Center, PM 37862, Landscape Improvements," with a penal sum of \$1,338,000.00.

50. Everest has breached their obligations under bond number ES00012797 by (a) failing to render faithful performance to complete the subject improvements, and/or (b) failing to surrender the penal sum of the subject bond.

51. At all times relevant hereto, the City has fully performed its obligations under Bond number ES00012797, and has otherwise been ready, willing and able to perform its remaining obligations, if any, under that surety bonds. Any further performance by the City has been excused by Everest's failure to perform.

52. As a direct and proximate result of Everest's breach of its obligations under the subject bond, the Improvements remain uncompleted.

53. The City has been damaged in an amount according to proof at the time of trial, including recovery of reasonably incurred attorney's fees and costs as provided for under Performance Bond ES0012797.

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1 WHEREFORE, the City of Calimesa prays for judgment against defendants, and each of
2 them as follows:

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4 **On the First Claim For Relief:**

5 1. For a determination that Everest has breached the terms of surety bond number
6 ES00012793.

7 2. For the damages caused proximately thereby.

8 3. For costs of suit, including attorney's fees pursuant to contract, statute or law.

9 4. For such other relief as the Court finds just and proper.

10 **On the Second Claim For Relief:**

11 1. For a determination that Everest has breached the terms of surety bond
12 number ES00012794.

13 2. For the damages caused proximately thereby.

14 3. For costs of suit, including attorney's fees pursuant to contract, statute or law.

15 4. For such other relief as the Court finds just and proper.

16 **On the Third Claim For Relief:**

17 1. For a determination that Everest has breached the terms of surety bond
18 number ES00012786.

19 2. For the damages caused proximately thereby.

20 3. For costs of suit, including attorney's fees pursuant to contract, statute or law.

21 4. For such other relief as the Court finds just and proper.

22 **On the Fourth Claim For Relief:**

23 1. For a determination that Everest has breached the terms of surety bond
24 number ES00012797.

25 2. For costs of suit, including attorney's fees pursuant to contract, statute or law.

26 For such other relief as the Court finds just and proper.

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On the Fifth Claim For Relief:

1. For a determination that Everest has breached the terms of surety bond number ES00012795.

2. For costs of suit, including attorney's fees pursuant to contract, statute or law.

3. For such other relief as the Court finds just and proper.

On the Sixth Claim For Relief:

1. For a determination that Everest has breached the terms of surety bond number ES00012796.

2. For costs of suit, including attorney's fees pursuant to contract, statute or law.

3. For such other relief as the Court finds just and proper.

Dated: April 18, 2024

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By: 

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